

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:21-cr-00068-MOC-WCM-1

UNITED STATES OF AMERICA,

v.

JOSHUA ANDREW PHILLIPS,

Defendant.

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ORDER

This matter is before the Court on Defendant’s Motion to Seal Addendum to Defendant’s Position Re: Sentencing and Exhibit A (the “Motion to Seal,” Doc. 34). The subject documents are an Addendum to Defendant’s position regarding sentencing and a “Case Review and Psychiatric Evaluation” by Dr. Charles Samenow (the “Documents,” Doc. 35).

In evaluating a motion to seal, the Court must “(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives.” Ashcraft v. Conoco, Inc., 218 F.3d 288, 302 (4th Cir. 2000); see also LCrR 49.1.1.

The undersigned has reviewed the Motion to Seal and considered the public’s interest in access to the Documents and alternatives to sealing.

The Motion to Seal has appeared on the public docket since it was filed on September 27, 2022. Defendant's sentencing is scheduled for October 4, 2022 and notice of that proceeding also appears on the docket.

With regard to the Documents themselves, Defendant states that he seeks to file these materials under seal because they include "detailed sensitive information." Doc. 34 at 1.

The Documents have been submitted in support of Defendant's sentencing arguments and Defendant's Sentencing Memorandum contains references to some of the information contained in the Documents. See e.g., Doc. 33 at 6-8.

Defendant's reliance on the Documents supports the public's right to access the Documents. However, Defendant's reference to the Documents in his Sentencing Memorandum also demonstrates that the general bases for his sentencing position is publicly known. Further, the Documents include detailed discussions of Defendant's background and mental status, as well as information about third parties.

Under these circumstances, the undersigned finds that the public's right of access to the Documents is substantially outweighed by Defendant's competing privacy interest in that information and that Defendant has made a sufficient showing to warrant the sealing of the Documents at this time.

IT IS THEREFORE ORDERED THAT the Motion to Seal (Doc. 34) is **GRANTED**, and the Addendum to Defendant's position regarding sentencing and the Case Review and Psychiatric Evaluation by Dr. Charles Samenow (Doc. 35) shall remain **SEALED** until further Order of the Court. This ruling is subject to further consideration by the District Court in connection with Defendant's sentencing as necessary, or upon a subsequent motion to unseal.

Signed: September 30, 2022

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf
United States Magistrate Judge

